



## DEPARTMENT OF LABOR

### Employment and Training Administration

Agency Information Collection Activities for H-2B Foreign Labor Certification Program;  
Comment Request

**AGENCY:** Employment and Training Administration, Department of Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor’s (DOL) Employment and Training Administration (ETA) is soliciting comments concerning a proposed revision to the information collection request (ICR) titled “H-2B Foreign Labor Certification Program,” and related information collection and retention requirements (OMB Control Number 1205-0509), which covers Forms ETA-9142B, ETA-9142B, Appendices A, B, C, and D, ETA-9142B, Final Determination, ETA-9165, ETA-9155, H-2B Seafood Industry Attestation, and related form instructions. This action seeks to revise the Form ETA-9142B and its instructions, revise the Form ETA-9142B Appendix D, and make a change to the Form ETA-9155 and its instructions to conform to changes made to the Form ETA-9142B. This action seeks to extend without change to the remaining forms in the information collection. This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

**DATES:** Consideration will be given to all written comments received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained for free by contacting Brian Pasternak, Administrator, Office of Foreign Labor Certification, by telephone at 202-693-8200 (this is not a toll-

free number), TTY 1-877-889-5627 (this is not a toll-free number), or by email at [ETA.OFLC.Forms@dol.gov](mailto:ETA.OFLC.Forms@dol.gov).

Submit written comments about, or requests for a copy of, this ICR by email at [ETA.OFLC.Forms@dol.gov](mailto:ETA.OFLC.Forms@dol.gov).

**FOR FURTHER INFORMATION CONTACT:** Brian Pasternak, Administrator, Office of Foreign Labor Certification, by telephone at 202-693-8200 (this is not a toll-free number) or by email at [ETA.OFLC.Forms@dol.gov](mailto:ETA.OFLC.Forms@dol.gov).

**AUTHORITY:** 44 U.S.C. 3506(c)(2)(A).

**SUPPLEMENTARY INFORMATION:**

DOL, in its continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program ensures the public provides all necessary data in the desired format, the reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed. This information collection is required by Sections 101(a)(15)(H)(ii)(b) and 214(c) of the Immigration and Nationality Act (INA) (8 U.S.C. 1011(a)(15)(H)(ii)(b) and 1184(c)), as well as 8 CFR 214.2(h)(6), 20 CFR 655, Subpart A, and 29 CFR 503. The H-2B program enables employers to bring nonimmigrant foreign workers to the United States to perform non-agricultural work of a temporary nature. *See* 8 U.S.C. 1101(a)(15)(H)(ii)(b). The Department of Homeland Security (DHS) consults with DOL with respect to the H-2B program, and DOL provides advice on whether U.S. workers capable of performing the temporary services or labor are available. *See* 8 U.S.C. 1184(c)(1), INA Section 214(c)(1) (providing for DHS to consult with “appropriate agencies of the Government”). Under DHS regulations, an H-2B petition for temporary employment must be accompanied by

an approved temporary labor certification from DOL, which serves as DOL's consultative advice to DHS regarding whether a qualified U.S. worker is available to fill the petitioning H-2B employer's job opportunity and whether a foreign worker's employment in the job opportunity will adversely affect the wages or working conditions of similarly employed U.S. workers. *See* 8 CFR 214.2(h)(6)(iii)(A), (iv)(A). DHS and DOL jointly promulgated regulations establishing the processes by which an employer must obtain a prevailing wage and temporary labor certification from DOL, and the rights and obligations of workers and employers. *See* 20 CFR 655, subpart A; 29 CFR part 503; 8 CFR 214.2(h)(6)(iii)-(iv). The information contained in the Form ETA-9142B, *H-2B Application for Temporary Employment Certification*, and corresponding appendices serve as the basis for the Secretary's determination that qualified U.S. workers are not available to perform the services or labor needed by the employer and that the wages and working conditions of similarly employed U.S. workers will not be adversely affected by the employment of H-2B workers.

ETA is seeking comments on proposed revisions to the Form ETA-9142B, *H-2B Application for Temporary Employment Certification*, its instructions, and Form ETA-9142B, *Appendix D*. The proposed revisions to the Form ETA-9142B seek to clarify collection of cap-subject and cap-exempt data which DOL uses to inform its advice to DHS regarding the H-2B numerical cap and seek to streamline the collection of overtime wage information for all worksites for the application. The proposed revisions to the Form ETA-9142B, Appendix D modify the appendix to collect joint employer information, as applicable, in addition to job contractor information.

This ICR includes the collection of information related to the use of employer-provided surveys for determining prevailing wages and the temporary labor certification process in the H-2B program. The Form ETA-9165, *Employer-Provided Survey Attestations to Accompany H-2B Prevailing Wage Determination Request Based on a*

*Non-OES Survey*, is used to collect information that permits ETA to determine whether an employer-provided survey can be used to establish a prevailing wage in the occupational classification in lieu of a prevailing wage determined using the Bureau of Labor Statistics Occupational Employment Wage Statistics (OEWS) program. ETA seeks approval of extension of this form and its instructions without change.

Additionally, ETA is seeking comments on the Form ETA-9155, *H-2B Registration*, which allows ETA to determine whether the nature and duration of the employer's need for H-2B workers is temporary. Where ETA has not operationalized the registration process through a separate notice in the *Federal Register*, H-2B applications are exempt from the registration requirements under 20 CFR 655.11, and the adjudication of the employer's temporary need will continue to occur based on information collected on the Form ETA-9142B. A change was made to the Form ETA-9155 to conform the registration form to the proposed changes to the Form ETA-9142B.

ETA is also seeking comments on its extension of Appendices A, B, and C to the Form ETA-9142B, and revision to Appendix D of the Form ETA-9142B. *Appendix A* requires an employer to use a standard format to disclose additional place(s) of employment and, if applicable, multiple wage offers for the job opportunity. Employers use *Appendix B* of the Form ETA-9142B to attest that they will comply with all of the terms, conditions, and obligations of the H-2B program. *Appendix C* requires an employer to use a standard format to disclose the identity and location of all foreign labor recruiters. In order to recruit prospective foreign workers for the job opportunities offered by the employer under the Form ETA-9142B, the employer, and its attorney or agent (as applicable), must provide the identity and location of all persons and entities hired by or working for the recruiter or agent and any of the agent(s) or employee(s) of those person and entities. *See* 20 CFR 655.9(b). Collection of this information in a standard format will also permit ETA to more effectively comply with 20 CFR 655.9(c), which requires the maintenance

of a publicly available list of foreign labor recruiters and the location(s) in which they are operating. The proposed revisions to *Appendix D* would require joint employers, whether filing as job contractors or not, to disclose the name and contact information of the employer-client or other joint employer.

The ICR contains a one-page Form ETA-9142B, *Final Determination: H-2B Temporary Labor Certification Approval*, which is issued electronically to employers granted temporary labor certification by DOL. In circumstances where the employer or, if applicable, its authorized attorney or agent, is not able to receive the temporary labor certification documents electronically, ETA sends the certification documents printed on standard paper in a manner that ensures overnight delivery. DOL seeks to extend the *Final Determination*.

Finally, ETA is requesting a three-year extension, without change, of the Form ETA-9142B, *Seafood Industry Attestation*. Employers in the seafood industry who wish to stagger the entry of H-2B workers into the United States between 90 and 120 days after the certified start date of need will need to complete the Form ETA-9142B, *Seafood Industry Attestation*, and provide a copy to each H-2B worker to present, upon request by DHS, when seeking entry into the United States.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205-0509. The DOL notes that existing information

collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection unless OMB, under the PRA, approves it and the collection tool displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the ADDRESSES section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB control number 1205-0509.

Submitted comments will also be a matter of public record for this ICR and posted on the Internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

*Agency:* DOL-ETA.

*Action:* Revision.

*Title of Collection:* H-2B Foreign Labor Certification Program.

*OMB Control Number:* 1205-0509.

*Affected Public:* Private Sector.

*Form(s):* ETA-9142B, ETA-9142B General Instructions, ETA-9142B, Appendices A, B, C, and D, ETA-9165, ETA-9165, Instructions, Seafood Industry Attestation, ETA-9155, ETA-9155, Instructions

*Total Estimated Number of Annual Respondents:* 88,193.

*Frequency:* On Occasion.

*Total Estimated Annual Responses:* 299,551.

*Average Time per Response:* 3 hours and 45 minutes

*Total Estimated Annual Time Burden:* 86,585.91 hours.

*Total Estimated Annual Other Costs Burden:* \$998,310.

AUTHORITY: 44 U.S.C. 3507(a)(1)(D).

SIGNED:

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Angela Hanks,

Acting Assistant Secretary for Employment and Training, Labor.

